In the High Court of Punjab and Haryana at Chandigarh

C.W.P. No. 7390 of 2007

Date of Decision: 4.10.2007

M/s Hero Honda Motors Limited

…Petitioner

Versus

State of Haryana and others

…Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

Present: Mr. Avneesh Jhingan, Advocate,
for the petitioner.

Ms. Ritu Bahri, DAG, Haryana,
for the respondents.

M.M. KUMAR, J.

The instant petition filed under Article 226 of the Constitution is directed against notices dated 16.6.2006 (P-1, 26.10.2006 (P-2) and 19.3.2007 (P-4). The notices have been issued by the Assistant Excise and Taxation Officer (PGT), for production of proof of TDS collected and deposited under the Punjab Passengers and Goods Taxation Act, 1952 (as applicable to Haryana) (for brevity, 'the Act').

When the matter came up for consideration on 27.9.2007, we have observed that the petitioner, who has hired buses from a contractor,

has deducted TDS at source and the question was whether the petitioner or the contractor was liable to pay tax. The case of the petitioner is that notification in pursuance to Section 5A of the Act has been issued on 8.5.2007 (R-3) i.e. few days before filing of the writ petition and that the petitioner would be under obligation to deduct the TDS after the date of issuance of notification dated 8.5.2007 and not in respect of the earlier period. Accordingly, we have issued direction to the respondents to ascertain as to whether the contractor has paid the tax in respect of the period preceding 8.5.2007 or the tax has been deducted at source by the petitioner in respect of that period.

In response to the aforementioned direction, learned State counsel has placed on record a letter dated 3.10.2007 alongwith Annexure-A, showing that TDS has been deposited by the petitioner even before 8.5.2007 w.e.f. January 2007. The aforementioned letter dated 3.10.2007 along with its annexures 'A' & 'B' are taken on record as Mark 'A'.

Learned counsel for the petitioner states that there is no obligation cast on the petitioner to deduct TDS at source before 8.5.2007. However, he submits that the petitioner is prepared to deposit the amount of TDS deducted at source by it in respect of the period preceding 8.5.2007, only to the extent it has collected from the contractor, without any interest or penalty. Learned counsel further contended that in view thereof, the demand raised by the respondents by issuing notice dated 21.3.2007 (P-4) be set aside.

Ms. Ritu Bahri, learned State counsel has raised no objection to the aforementioned course being adopted.

In view of the above, notice dated 21.3.2007 (P-4) is set aside by granting liberty to the respondents to determine the liability of the petitioner afresh by keeping in view the statement made by the assessee through learned counsel for the petitioner.

The writ petition stands disposed of in the above terms.

(M.M. KUMAR)
JUDGE

(AJAY KUMAR MITTAL)
JUDGE

October 4, 2007

Pkapoor